

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 26175

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee

vs.

WILLIAM W. RAMSEY, Defendant-Appellant

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APPEAL FROM THE SECOND CIRCUIT COURT  
(CR. NOS. 88-0288 and 88-0289)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that appellant William Ramsey is appealing the circuit court's September 17, 2003 order filed in Cr. Nos. 88-0288 and 88-0289. In the September 17, 2003 order, the circuit court denied appellant's request for appointment of counsel to assist appellant in preparing a Rule 35 motion. Appellant has not yet filed a Rule 35 motion and the circuit court's September 17, 2003 order did not deny appellant relief under Rule 35. The circuit court's statement in the September 17, 2003 order that "Defendant Ramsey fails to allege any facts or legal basis for relief under Rule 35" explained the denial of appointment of counsel and did not deny Rule 35 relief. Until a Rule 35 motion is filed by appellant and decided by the circuit court, the appeal of the September 17, 2003 order denying appointment of counsel is

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premature and we lack jurisdiction. See HRS § 641-11.

Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 24, 2004.